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Mr. Raymont quotes with approval from the late Professor H. Sidgwick (p. 4)? In much of this current controversy about mental training it seems to us that the formation of general habits of concentration, exact statement, and rigid reasoning is lost sight of, and that it is this which is true in the claims urged for those formal studies which are comparatively empty of attractive ideas.

But we do not wish our notice of Mr. Raymont's work to be filled with points on which we do not altogether agree with him, and which, indeed, occupy but a small portion of his book. On the whole we cordially commend it as a sane and straightforward account of the *axiomata media* of school work.

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POSITIVISCHE BEGRÜNDUNG DES PHILOSOPHISCHEN STRAFRECHTS. By Bruno Stern. Berlin: Hermann Walther Verlagsbuchhandlung, 1905. Pp. 97.

This work contains much of interest to ethical readers. The author's aim is to effect a reconciliation, in the sphere of penal law, between the historic school of right and speculative philosophy. His work belongs to the realm of philosophy, taken in the positive scientific sense which, in rejection of all metaphysics, founds on experience. German-wise, it begins with an excellent paper on the universal basis or foundation of penal law. It touches first on the work of Lombroso, head of the Italian positivistic school of penal law, whose method was, by anatomical, physiological, and psychologic data, inductively to explain the appearance of crime. The service of Lombroso to the science of criminal investigation, as having set it on the path of empiric method, is acknowledged, while his theoretic positions are held to have been overpassed. They were too narrowly taken, and did not expand to take a really empiric view of philosophical problems.

The second great influence to which Herr Stern attributes the introduction of positive moments in the science of penal law was the comprehensive work of H. Gross. Our author thinks the positive inquiry advocated in this work was furthered by Kant's critical idealism much more than by the positivism of Comte. With Kant, setting out from psychic occurrences to reach the conclusions of "Kritizismus," he connects Du Bois-Reymond, as having reached the same goal, with the material problems of

natural science as his starting point. Later, La Mettrie is mentioned as having already recognized the double impossibility of knowing the essence of matter and of consciousness, and, in the same line of intellectual descent, Haeckel and Strauss. The author concludes that any dogmatic or speculative philosophy must overstep the limits of science, in respect of these matters, and land us in the dreaded sphere of the transcendent. And so he falls back upon his positivistic foundation for universal penal law.

He takes the Historic School of the Science of Right, as represented by Hugo and Savigny, to have been of great influence and significance, but touches on grounds of opposition offered to it by Bruns, Geyer, and others. Here, as earlier, the ethical relations of the matters discussed are distinctly kept in view, ethics being frankly taken by Stern as positive science, shaped after natural science methods. Ethics he regards as an independent science, inductive and genetic in method, free of every religious and metaphysical presupposition, and founded upon evolution and experience. In the grounding of ethics he lays chief stress on the empiric proof of the rise of morality. Thus does he, in his first chapter, lay the general basis for his special treatment of the penal law problem in the chapters that follow. Stern's standpoint is sometimes other, even in leading positions, than that which carries for the present reviewer greatest sympathy, but criticism has been deemed less needful than to give some idea of the clearness, scope, and powers of the author.

Chapter second is on the essence of crime, which, as proceeding usually from the person of the individual, is contrastive to penalty, whose right and task belong to the social community. A good and interesting chapter it is, dealing with crime as anti-ethical action—action egoistic in opposition to action flowing from moral impulse. Moral crime or anti-ethical action is distinguished from legal crime, which is punishable anti-ethical conduct. Having elucidated crime on its anthropological-social side, the author passes on to deal with the essence of punishment in the third chapter.

There the absolute and relative theories of punishment are first treated, the latter being related to rightful end or purpose to be furthered thereby. The positions of Kant, Hegel, and Herbart, as chief defenders of the absolute theories, are discussed, and the great part played by the relative theories of Feuerbach and others is acknowledged. Among those whose positions are touched

upon in this connection are Bentham, Krause, Ahrens, Martin, and Welcker. To the two classes of theory already specified must be added theories of union as a third class. But none of these classes can claim the distinction, our author thinks, of having a universally valid natural grounding of philosophical penal law, such as we have foreshadowed in Spinoza, Hobbes, Locke, Rousseau, Fichte, and Beccaria. But we must pass from his discussion of the place here of ethics as positive science, that we may speak of the fourth chapter. It is on the freedom of the will, as significant for the positivistic grounding of philosophical penal law. Stern takes three positions to have obtained as to freedom of the will. First, those who deny it in general, like Spinoza, and make man's action the result of the necessary compulsion of Nature, not of self-determination. But the outer world, says our author rightly, lays no irresistible compulsion upon the soul—a fact which is confirmed by the very possibility of the culture of character. He thinks the denial of freewill must be rejected, shutting out, as it does, all responsibility in the ethical, and corresponding penal law, sense. The second position, that of indeterminism, our author also rejects, because it is a perfectly irregular play of will, free from causal and determinate laws in contradiction to everyday observation and experience. On which one may be allowed to remark that the author must surely know that reasonable indeterminists—his own countryman, Gutberlet, for example—would not at all admit the adequacy or correctness of his account of indeterminism. The third position is that of transcendental freedom—midway between freedom and necessity—as seen in Kant and Schopenhauer. But this also would, in our author's view, exclude all moral and penal law responsibility. Stern goes on to seek an empirically grounded freedom of the will, which he finds first in Herbart and Beneke. But space limits forbid my following him in detail.

The last chapter is on culture and morality in their relations to penal law. The work, as a whole, is ably and interestingly written, and may be recommended to the attention of all specially interested in its problems. There is a useful bibliography at its close.

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